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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-190257

DATE: September 13, 1978

MATTER OF: Crystal Greaser Sharp - Highest previous
rate on transfer

DIGEST: Salary of employee, who was paid at grade GS-4, step 1 prior to transfer, was not by acquiring agency at GS-3, step 1. The evidence presented does not establish that the personnel officer erred in applying a lower rate in 1971 in accordance with discretionary provision of regulations. Accordingly, personnel actions retroactively adjusting rate of compensation which would result in payment of difference between rate received and the highest previous rate may not be processed.

Ms. Lois C. Snider, a certifying officer for the Department of the Interior, Mining Enforcement and Safety Administration (MESA), requests an advance decision concerning the entitlement of Ms. Crystal Greaser Sharp to a retroactive pay adjustment.

The record shows that prior to May 2, 1971, Ms. Sharp was employed by the Federal Highway Administration, Department of Transportation in Washington, D.C., as a clerk-stenographer, grade GS-4, step 1. On May 2, 1971, she transferred to a grade GS-3 clerk-typist position with the Bureau of Mines, Department of the Interior, in Morgantown, West Virginia. Her salary was set at that time at grade GS-3, step 1, at a rate of \$5,524 per annum. By virtue of Secretarial Order No. 2953, the mining health and safety function was transferred from the Bureau of Mines to MESA in 1973, and Ms. Sharp is currently employed by the latter agency.

In 1977 Ms. Sharp obtained a review by the Eastern Personnel Office of MESA of the personnel action effecting her transfer from the Federal Highway Administration to the Bureau of Mines. The MESA personnel officer concluded that under Department of the Interior regulations in effect at the time of transfer Ms. Sharp's salary should have been set at step 5, rather than step 1, of grade GS-3. Those regulations were contained in Part 370 of the Department of the Interior Departmental Manual, chapter 531, paragraphs 2.1B and 2.2D, which provide respectively, as follows:

"2.1B. If a change to lower grade is voluntary or at the request of the employee, his pay may be adjusted to any rate which does not exceed his existing rate of pay. If his existing rate of pay falls between two rates of the lower grade, he may be given the higher rate; however, the maximum scheduled rate of the new grade shall not be exceeded. If a change to lower grade is for the purpose of acquiring competitive status, the employee's pay shall be adjusted to a rate which upon repromotion with the required two-step increase will result in the rate which he would have received had he remained continuously in the higher grade."

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"2.2D. Reassignment or Transfer from Another Agency. The pay of an employee who is reassigned to another position or transferred from another agency without promotion shall be set so as to retain his existing rate of pay. If the existing rate falls between two rates, the higher of the two shall be applied."

The MESA personnel officer interpreted paragraph 2.2D as intended to cover all situations where an employee transfers to a position in the same grade, or to a position in a lower grade. Since that paragraph requires that the rate of pay of a transferred employee be set so as to retain his existing rate of pay, personnel actions and payroll change slips were processed to set Ms. Sharp's initial pay upon transfer at GS-3, step 5 at a rate of \$6,260 per annum, and to make subsequent adjustments as necessary.

The Chief of the Division of Personnel at the Bureau of Mines, however, advised that the proposed retroactive pay adjustment should not be made effective. He first contends that since Ms. Sharp was transferred on May 2, 1971, under 31 U.S.C. §71a (Supp. IV, 1974), the statute of limitations expired on May 2, 1977, thus barring her entire claim. In addition, he interprets paragraph 2.2D of 370 DM 531 "to apply only to lateral movement from within or outside the Department since by definition reassignments must be lateral * * *." He further contends that a voluntary change to a lower grade is covered by paragraph 2.1B, which provides that the agency, within its discretion,

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may authorize the highest previous rate, where the change to a lower grade is voluntary or at the request of the employee. He therefore concludes that since the Bureau of Mines intended to offer Ms. Sharp a position at grade GS-3, step 1 upon transfer, no administrative error occurred, and Ms. Sharp is not entitled to backpay.

Pursuant to our request concerning the policy of the Department of the Interior with regard to the highest previous rate rule, we received a statement from the Acting Chief, Division of Labor Management Relations. In a letter dated June 21, 1978, he states that problems have existed in the past with these regulations. These regulations are currently being revised to clarify their meaning. He further says that it is the policy of the Department of the Interior to retain the existing pay when an employee transfers from another agency without promotion. This applies when the employee transfers to the Interior at the same grade level or from a position of a higher grade to a lower grade position in Interior. However, he has not submitted information relating to the precise situation of a voluntary change to a lower grade in 1971 under the regulations.

In light of the foregoing the certifying officer asks clarification of her responsibility in processing personnel actions. She, also, raises a question concerning the propriety of MESA's personnel officer issuing personnel actions which affect Ms. Sharp's tenure with the Bureau of Mines.

In cases involving the highest previous rate of compensation, the statutory authority for establishing basic pay rates is 5 U.S.C. 5334. This provision authorizes the establishment of basic pay rates to be accomplished in accordance with regulations promulgated by the Civil Service Commission. Those regulations in turn grant discretionary authority to the various agencies in whether to apply the highest previous rate in cases involving transfers.

The departmental regulations in effect at the time of Ms. Sharp's employment with the Bureau of Mines are unclear concerning the application of the highest previous rate rule in the case of a voluntary change to a lower grade upon transfer from another agency to the Department of the Interior. We understand that Ms. Sharp voluntarily accepted employment with the Bureau of Mines at a lower

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grade. On the evidence presented to us, we cannot conclude that the personnel officer erred in 1971 in establishing Ms. Sharp's rate of compensation at GS-3, step 1, in accordance with paragraph 2.1B of the regulations which authorizes discretion in applying the rule.

Accordingly, the personnel actions retroactively adjusting Ms. Sharp's compensation so as to authorize the payment of backpay should not be processed and will be retained here.

Milton J. Arosline

Acting Comptroller General
of the United States